

STATE OF MICHIGAN
COURT OF APPEALS

LANDON HOLDINGS, INC. and DONALD
OSBORN,

UNPUBLISHED
July 14, 2005

Plaintiffs-Appellees,

v

GRATTAN TOWNSHIP and GRATTAN
TOWNSHIP ZONING BOARD OF APPEALS,

No. 255076
Kent Circuit Court
LC Nos. 02-005509-CZ;
03-009742-CZ

Defendants-Appellants.

Before: Murphy, P.J., and Sawyer and Donofrio, JJ.

PER CURIAM.

Defendants appeal from two circuit court orders dated April 1, 2004. The first order granted plaintiff's motion to exclude evidence of the Grattan Township Zoning Board of Appeals' (ZBA) September 25, 2003 resolution. The second order vacated and reversed the September 25, 2003 resolution. Because Grattan Township amended its zoning ordinance to allow for a Planned Unit Development (PUD) on administrative application to the ZBA, and the trial court has ruled such action to be admissible in the pending litigation, the cases are moot, and we affirm.

This appeal arises from two separate cases concerning the same parties and piece of property. Plaintiff Donald Osborn owns 200 acres of land in Grattan Township. The land is zoned agricultural, meaning Osborn can build up to ten residential housing units on his property without seeking a PUD variance. Plaintiff Landon Holdings, Inc. develops manufactured housing communities and has optioned Osborn's land for the purpose of building a 690-unit manufactured housing community. In early 2002 plaintiffs sought a use variance to build this community. The ZBA denied the variance application on April 17, 2002. The first case from which this appeal arises is plaintiffs' appeal of the ZBA's April 17, 2002 decision. Plaintiffs argued that the then-current zoning of the property was unreasonable and, as such, was confiscatory and denied plaintiffs substantive due process and equal protection of the laws.

Following the institution of plaintiffs' appeal, Grattan Township filed an appeal with the ZBA of the ZBA's April 17, 2002 decision. In its appeal, the township sought a PUD variance for plaintiffs' property. The purpose of seeking this variance was to have evidence in any upcoming trial that the township's zoning ordinance as applied to plaintiffs' property was not

unreasonable because, while plaintiffs' were not permitted to build the 690-unit manufactured housing community, they were permitted to build a single-family PUD on the property.

On September 25, 2003, the ZBA conducted a public hearing regarding the township's appeal. Following the hearing, the ZBA adopted a resolution approving a PUD variance for plaintiff's property allowing the property to be developed with not more than 100 single-family homes, subject to the filing, review, and approval of a PUD application with the township. Plaintiffs moved to exclude evidence of this resolution and instituted a second case to appeal the ZBA's September 25, 2003 resolution.

The circuit court held a hearing on March 18, 2004 concerning plaintiffs' appeal of the ZBA's resolution and their motion to exclude evidence of the resolution. In an oral ruling, effectuated by the April 1, 2004 orders, the court vacated and reversed the ZBA's resolution and granted plaintiff's motion to exclude. The court ruled that the township did not have standing to seek a variance from the ZBA with respect to the property because it had no ownership interest in the property. The court also ruled that the ZBA lacked authority to pass the resolution granting the PUD variance. According to the Grattan Township zoning ordinance, a PUD can be created only by a rezoning; a request for rezoning to create a PUD must go through the planning commission and the township board. Therefore, the ZBA had no authority to grant plaintiffs a PUD variance. The court, however, noted that Grattan Township could amend its ordinance to change PUD approval from a legislative act (requiring rezoning) to an administrative act.

Defendants subsequently amended their zoning ordinance to allow a PUD variance without rezoning upon administrative approval. This amendment purportedly would allow plaintiffs to develop the property as a PUD upon administrative approval only and to develop between 66 and 100 single-family homes. The final number of units allowed under the amendment would be contingent on the various size and setback regulations set forth in the amendment. Plaintiffs moved to exclude evidence of these amendments. The court denied the motion in a written order dated July 1, 2004.

In this appeal, defendants argue that the circuit court erred in reversing and vacating the ZBA's September 25, 2003 resolution and in granting plaintiffs' motion to exclude evidence of the resolution. We need not reach this argument because defendants' appeal is moot. An appeal is moot where the occurrence of an event renders it impossible for this Court to fashion a remedy. *Crawford County v Secretary of State*, 160 Mich App 88, 93; 408 NW2d 112 (1987). An appeal is also moot when "it presents only abstract questions of law that do not rest upon existing facts or rights." *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).

Defendants sought the September 25, 2003 ZBA resolution granting plaintiffs' a PUD variance for the purpose of introducing at any upcoming trial evidence that the township's zoning ordinance was not unreasonable as applied to plaintiffs' property. Defendants' purpose was defeated when the circuit court initially granted plaintiffs' motion to exclude evidence of the resolution, and reversed and vacated the resolution. However, on July 1, 2004, the circuit court denied plaintiffs' motion to exclude evidence of defendants' amendment to the township's zoning ordinance. Therefore, defendants are free to introduce at any upcoming trial evidence that plaintiffs are permitted to develop 66 to 100 single-family homes on their property.

By amending its ordinance and securing the admission of the amendment at the upcoming trial, Grattan Township achieved its objective of being able to introduce evidence at trial that, because of the availability of the PUD, the zoning of plaintiff's property is not confiscatory and is otherwise consonant with due process and equal protection principles. In other words, defendants' ability to defend the constitutional claims by reliance on PUD usage potential is now established. Consequently, the issues raised in the instant appeal, to the extent of having any practical application to the pending litigation, are moot.

Affirmed.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Pat M. Donofrio